

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Angel Rendon	Team: Team # 1	CCRB Case #: 201303204	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/15/2013 3:30 PM	Location of Incident: East Tremont Avenue and White Plains Road	Precinct: 43	18 Mo. SOL 10/15/2014	EO SOL 10/15/2014	
Date/Time CV Reported Mon, 04/22/2013 1:37 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/22/2013 1:37 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Joebian Ortiz	02131	919519	GANG BS
2. SGT Terrell Anderson	00000	933551	GANG BS
3. POM Charne Jimenez	00425	940304	GANG BS
4. POM Kevin Tagnosky	25104	946566	GANG BS
5. DT3 Steven Millwater	05789	935325	GANG DV

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Shane Gugliucciello	00431	921406	GANG BX
2. DT1 Jose Rodriguez	06634	907530	GANG BX
3. LT Peter Carretta	00000	917387	GANG BS
4. LT John Xenakis	00000	905636	GANG DV
5. SDS John Okeefe	02831	906971	GANG DV
6. DT2 Vincent Imperato	01070	919197	GANG DV

Officer(s)	Allegation	Investigator Recommendation
A.SGT Terrell Anderson	Abuse: SGT Terrell Anderson stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Charne Jimenez	Abuse: PO Charne Jimenez frisked § 87(2)(b)	
C.POM Kevin Tagnosky	Abuse: PO Kevin Tagnosky searched § 87(2)(b)'s bag.	
D.SGT Terrell Anderson	Abuse: SGT Terrell Anderson searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(4-b) § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b) § 87(2)(g)		

Case Summary

On April 22, 2013, § 87(2)(b) filed the following complaint on his and § 87(2)(b)'s behalf with the CCRB over the phone (encl. 5a-5c).

On April 15, 2013, at approximately 3:30 p.m., on East Tremont Avenue and White Plains Road in the Bronx, officers stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. The following allegations resulted.

Allegation A – Abuse of Authority: SGT Terrell Anderson stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Charne Jimenez frisked § 87(2)(b)

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Kevin Tagnosky searched § 87(2)(b)'s bag.

§ 87(2)(g)

Allegation D – Abuse of Authority: SGT Terrell Anderson searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

At the time of his CCRB interview, mediation was presented to § 87(2)(b) as an option for resolving his complaint, but this complaint was rendered ineligible for mediation due to § 87(2)(b)'s stated interest in filing a lawsuit regarding the incident.

Results of Investigation

Civilian Statements:

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old Hispanic male with a light tan complexion, who stands 5'10", weighs 275 lbs., and has black curly hair and brown eyes.
- § 87(2)(b)

CCRB Statement (encl. 5a-6k):

On April 22, 2013, § 87(2)(b) provided an intake statement (encl. 5a-5c). On May 2, 2013, § 87(2)(b) provided a phone statement (encl. 6a). On May 9, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 6b-6d). § 87(2)(g)

On April 15, 2013, between 3:00 p.m. and 3:30 p.m., § 87(2)(b) picked up § 87(2)(b) at § 87(2)(b) in the Bronx, where she resided in § 87(2)(b) in his Ford Explorer SUV (encl. 6e-6h). § 87(2)(b) and § 87(2)(b) were dating at the time. The rear passenger windows and the rear windshield were tinted at 5%. § 87(2)(b) entered the front passenger seat. In the backseat or on the floor of the front passenger seat, was a black trash bag containing sealed manila envelopes with perfume bottles inside, which § 87(2)(b) was going to mail. The trash bag was not sealed.

§ 87(2)(b) drove less than a block southbound to Guerlain Street and made a left turn. § 87(2)(b) then drove one block east on Guerlain Street to Leland Avenue. At Leland Avenue, § 87(2)(b) made a full stop at the stop sign, and turned left onto Leland Avenue. § 87(2)(b) drove one block north and made a right turn onto East Tremont Avenue traveling eastbound.

On East Tremont Avenue, § 87(2)(b) noticed an unmarked vehicle behind him honking its horn and flashing a white light. § 87(2)(b) turned right onto White Plains Road. The unmarked vehicle followed and pulled behind his vehicle. § 87(2)(b) rolled down the front driver side window. PO Charne Jimenez (identified by the investigation and described as a Hispanic male with a light tan complexion, who stood 5'5"-5'6", had a heavyset build, wore a beard, had black hair that was balding, and was dressed in plainclothes) approached § 87(2)(b)'s vehicle on the driver's side. § 87(2)(b) reached into his glove compartment for his documentation but made no other movements. § 87(2)(b) made no movements and may have been holding her purse in her lap.

PO Jimenez told § 87(2)(b) to lower the rear windows and requested § 87(2)(b)'s driver license and registration. § 87(2)(b) reached into his pocket and handed his documents to PO Jimenez. PO Jimenez said that § 87(2)(b) drove through the stop sign at Guerlain Street and Leland Avenue. PO Jimenez

instructed § 87(2)(b) to step out and put his hands on the vehicle. § 87(2)(b) exited, turned away from PO Jimenez and put his hands over the front driver side door.

PO Jimenez patted § 87(2)(b) down beginning with his upper back, down below his shoulders, along his sides, and then swiped his left and right leg. PO Jimenez turned § 87(2)(b) around to face him and grabbed and gently squeezed § 87(2)(b)'s crotch. PO Jimenez did not say anything while frisking § 87(2)(b). PO Jimenez led § 87(2)(b) to the rear of the vehicle, where PO Kevin Tagnosky (identified by the investigation and described as a white male, who stood 5'7"-5'9", had a stocky muscular build, in his late 20s to early 30s, dressed in plainclothes and carried his firearm in a holster affixed to his thigh) and DT Joebian Ortiz (identified by the investigation and described as a Hispanic male with a tan complexion, who stood 5'10"-5'11", had a medium build, was in his early to mid-30s, and was dressed in plainclothes) were standing. DT Ortiz's shield number was either 2131 or 3121. PO Tagnosky walked to the passenger side and escorted § 87(2)(b) to the rear of the vehicle. § 87(2)(b) sat on his rear bumper. DT Ortiz stood directly in front of § 87(2)(b). PO Jimenez stood to DT Ortiz's left, which placed him on the right side of § 87(2)(b)'s field of vision. PO Tagnosky stood directly in front of § 87(2)(b) to § 87(2)(b)'s left.

SGT Terrell Anderson (identified by the investigation and described as a black male, who stood 6'1"-6'2", had a slim muscular build, was in his mid to late 20s, and was dressed in plainclothes) opened § 87(2)(b)'s driver's side door. § 87(2)(b) had not noticed SGT Anderson until this point. SGT Anderson leaned into the vehicle but § 87(2)(b) was unable to see what he did inside. DT Ortiz told § 87(2)(b) to turn and face him and § 87(2)(b) complied. § 87(2)(b) said that he did not consent to the search of his vehicle. DT Ortiz said that they did not need his consent. § 87(2)(b) noted that he was only stopped for driving through a stop sign. DT Ortiz told § 87(2)(b) that they were looking for drugs. PO Jimenez added, "I'm looking for guns." § 87(2)(b) heard car doors opening and closing, but he did not turn around to see what was happening. SGT Anderson yelled out, "You sell stuff on eBay?" § 87(2)(b) replied that he did. § 87(2)(b) believed that SGT Anderson was referring to the trash bag filled with packaged perfume but he did not know why SGT Anderson mentioned eBay specifically. After five to seven minutes of searching the vehicle, SGT Anderson walked to the rear and said, "It's clean."

DT Ortiz explained that their interaction could end with § 87(2)(b) being released, "no questions asked," or with a summons for driving through the stop sign or tinted windows. DT Ortiz gestured toward § 87(2)(b)'s rear windshield. § 87(2)(b) explained that he was allowed to have window tints on an SUV. DT Ortiz replied that the tint was too dark. § 87(2)(b) replied, "Okay. Just let me go." § 87(2)(b) and § 87(2)(b) returned to the vehicle. § 87(2)(b) later learned from § 87(2)(b) that her purse was "checked."

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female, who stands 5'9", weighs 191 lbs., and has brown hair and brown eyes. § 87(2)(b) is § 87(2)(b)'s girlfriend.
- § 87(2)(b)

CCRB Statement (encl. 7a-7g):

On May 9, 2013, § 87(2)(b) was interviewed at the CCRB. § 87(2)(g)

On April 15, 2013, at approximately 3:00 p.m., § 87(2)(b) and § 87(2)(b) left her apartment, located at § 87(2)(b) in the Bronx. § 87(2)(b) brought an unsealed trash bag containing 20-30 small packages of colognes and perfumes which they were going to mail to people who had purchased the items on eBay. § 87(2)(b) placed the trash bag in the backseat of the vehicle.

§ 87(2)(b) made a right turn onto White Plains Road and pulled over. An unmarked black SUV pulled up approximately one half car-length behind their vehicle. § 87(2)(b) remained still, with her bag in her lap. § 87(2)(b) made no movements. PO Charne Jimenez (identified by the investigation and described as a Hispanic male with a tan complexion, who stood 5'10"-5'11", had a medium build, was in his mid-30s, had short black hair, and was dressed in plainclothes) approached the driver side of the vehicle. PO Kevin Tagnosky (identified by the investigation and described as a white male, who stood 5'8" and was dressed in plainclothes) approached the passenger side.

PO Jimenez told § 87(2)(b) to roll down all the vehicle's windows. § 87(2)(b) complied. § 87(2)(b) asked why he was pulled over. PO Jimenez told § 87(2)(b) to exit the vehicle. § 87(2)(b) assumed this applied to her as well and exited the vehicle. They both left their doors open. PO Tagnosky asked § 87(2)(b) if she knew § 87(2)(b). § 87(2)(b) said she did. PO Tagnosky asked what § 87(2)(b)'s name was. § 87(2)(b) replied, "§ 87(2)(b) (§ 87(2)(b) called § 87(2)(b) '§ 87(2)(b) for short.) PO Tagnosky asked where they were going. § 87(2)(b) replied to the post office and Staples. § 87(2)(b) and PO Jimenez were talking on the driver side but § 87(2)(b) did not hear much of their conversation. PO Tagnosky asked § 87(2)(b) if she was from around the area. § 87(2)(b) gave PO Tagnosky her address. PO Tagnosky asked § 87(2)(b) if he could "see" her bag (encl. 7d). § 87(2)(b) unzipped the main compartment of her bag and spread the sides open. PO Tagnosky held the bag steady with one hand on its side and put his other hand inside and moved its contents around. PO Tagnosky told § 87(2)(b) to step to the rear of the vehicle, and followed her. As § 87(2)(b) walked toward the rear, she saw the top of § 87(2)(b)'s head facing the driver side of the vehicle, and his arms in the air with his palms open. His positioning led § 87(2)(b) to believe that § 87(2)(b) was being searched.

PO Jimenez and § 87(2)(b) met PO Tagnosky and § 87(2)(b) at the rear of the vehicle. § 87(2)(b) stood closer to the driver side and § 87(2)(b) stood closer to the passenger side. DT Joebian Ortiz (identified by the investigation and described as a Hispanic male with a light complexion, who stood 5'6"-5'7", had a chubby build, was in his mid-30s, had a shaved head, and was dressed in plainclothes) was also at the rear. § 87(2)(b) did not see where DT Ortiz came from. § 87(2)(b) asked what was going on. PO Jimenez reassured § 87(2)(b) that they were just checking the car and if everything turned out alright they would be sent on their way. An officer said that § 87(2)(b) had committed a moving violation, § 87(2)(b) did not recall what kind, but § 87(2)(b) denied doing so.

While § 87(2)(b) and § 87(2)(b) stood at the rear with PO Jimenez, PO Tagnosky, and DT Ortiz, an officer identified by the investigation as SGT Terrell Anderson entered the vehicle through the front driver side door. § 87(2)(b) watched SGT Anderson through the rear windshield feel around the driver and passenger seat area. SGT Anderson then opened the glove compartment but § 87(2)(b) did not see if he placed his hand inside because his body obscured his movements. SGT Anderson then and felt around the backseat area. § 87(2)(b) noticed that the rear driver side door had been opened, but she did not see who opened it, nor if SGT Anderson entered the vehicle through this door.

While SGT Anderson was searching the vehicle, PO Jimenez asked § 87(2)(b) whether he deals with merchandise. § 87(2)(b) replied, "I do have a few things in that bag—just colognes, perfumes. I sell them on eBay." § 87(2)(b) surmised that SGT Anderson had somehow communicated the presence

of the black trash bag to PO Jimenez, but she had no idea how or when this communication occurred. After four to five minutes, SGT Anderson announced that “everything was good.” No officer asked for consent to search the vehicle. § 87(2)(b) did not see when SGT Anderson left, but he left without her ever getting a look at him. § 87(2)(b) believed he was a male based on the sound of his voice. The incident lasted approximately five to six minutes.

NYPD Statements:

Subject Officer: PO CHARNE JIMENEZ

- *PO Jimenez, who has since been promoted to detective and reassigned to Bronx Gang Squad, is a § 87(2)(b) year-old Hispanic male, who stands 5’6”, weighs 270 lbs., and has brown hair and brown eyes.*
- *On April 15, 2013, PO Jimenez worked from 8:00 a.m. to 7:33 p.m. and was assigned to Brooklyn South Gang Squad. § 87(2)(e)*
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) *PO Jimenez was partnered with PO Kevin Tagnosky, dressed in plainclothes, and assigned an unmarked blue Hyundai sedan (#46327).*

Memo Book (encl. 8a-8c):

At 2:10 p.m., PO Jimenez and PO Tagnosky went to the 43rd Precinct for an emergency search warrant with Gang Major Case Squad. At 3:00 p.m., PO Jimenez and PO Tagnosky arrived in the vicinity of the 43rd Precinct. At 5:40 p.m., a search warrant was conducted in the vicinity of the 43rd Precinct. At 6:00 p.m., PO Jimenez resumed patrol. At 7:15 p.m., PO Jimenez returned to the Brooklyn South Gang Squad command.

CCRB Statement (encl. 8d-8g):

On May 7, 2014, PO Jimenez was interviewed at the CCRB. § 87(2)(e)

§ 87(2)(b) PO Jimenez did not recall anything about this list of individuals at this point, or how long the list was, except to say that they were all males and they were to be arrested on sight.

PO Jimenez and PO Tagnosky drove to the location and arrived there around 3:00 p.m. SGT Anderson also drove to the location but in a different vehicle.

PO Jimenez parked with an unobstructed view of the entrance of § 87(2)(b) PO Jimenez did not recall how far away he was from the entrance of the building. Another unit parked farther up along the street and a third unit parked farther up along past the second unit. All three units were on § 87(2)(b) SGT Anderson and his partner were in one of these three vehicles, but PO Jimenez did not recall which. PO Jimenez did not recall who was in the third vehicle. Additional units were in the vicinity, but PO Jimenez did not know where those units were. There were no officers set up inside the building at this point.

An individual, identified as § 87(2)(b) exited the building with a female, identified as § 87(2)(b). This was PO Jimenez's first sighting of them. § 87(2)(b) carried a medium-size black (opaque) shopping bag in the crook of his arm. The bag appeared full, but PO Jimenez could not say if it appeared heavy or if it was sagging. They walked directly to their SUV and drove off. PO Jimenez did not see where § 87(2)(b) placed the bag inside the vehicle. PO Jimenez did not lose sight of § 87(2)(b) during this observation. As § 87(2)(b) and § 87(2)(b) pulled away, SGT Anderson directed PO Jimenez via the point-to-point radio to stop § 87(2)(b)'s vehicle because § 87(2)(b) matched the description of one of the individuals for whom they had an arrest warrant. SGT Anderson said nothing about the woman or the black bag.

Although PO Jimenez did not match § 87(2)(b) to one of their suspects on his own, he agreed with SGT Anderson's observation and believed that he had probable cause to arrest at this time. PO Jimenez followed to stop the vehicle and confirm whether § 87(2)(b) was one of their suspects. PO Jimenez did not receive information from anyone stating that either of these individuals had emerged from or entered the apartment inside the building where they intended to execute the search warrant.

PO Jimenez and PO Tagnosky followed the vehicle for approximately three blocks, to establish a distance from the search warrant execution location, before stopping the vehicle on East Tremont Avenue and White Plains Road. SGT Anderson and the third unit arrived right behind PO Jimenez nearly simultaneously. PO Jimenez alerted § 87(2)(b) and § 87(2)(b) to the stop by using a red bubble light. They stopped their vehicle immediately.

PO Jimenez approached the front driver side of the vehicle and PO Tagnosky approached the front passenger side. PO Jimenez did not recall if the vehicle had window tints, but the back window might have been tinted. As he approached, PO Jimenez saw silhouettes in the vehicle but did not see movement by either occupant that heightened his suspicion. § 87(2)(b) was in the driver seat and § 87(2)(b) was in the front passenger seat. The windows of the vehicle were rolled down.

PO Jimenez identified himself as a police officer and spoke past § 87(2)(b) telling § 87(2)(b) to provide his identification and step out. § 87(2)(b) and § 87(2)(b) began retrieving their documents, but PO Jimenez told § 87(2)(b) it would not be necessary and § 87(2)(b) to wait until he stepped out. PO Jimenez also told § 87(2)(b) to step out. PO Jimenez did not hear what PO Tagnosky said, if anything, on the passenger side of the vehicle. While standing at the driver side, PO Jimenez did not see § 87(2)(b) or § 87(2)(b) make any suspicious movements and they complied with the instructions given to them. PO Jimenez did not see the black bag inside the vehicle from where he stood. PO Jimenez, PO Tagnosky, § 87(2)(b) and § 87(2)(b) went to the rear of the vehicle, where SGT Anderson was. SGT Anderson went to the side of the vehicle at one point also.

PO Jimenez frisked § 87(2)(b) to make sure that § 87(2)(b) had nothing dangerous on him. PO Jimenez did not see any shapes or bulges in § 87(2)(b)'s clothing that heightened his suspicion. PO Jimenez did not suspect § 87(2)(b) of having a specific type of weapon or dangerous instrument. The frisk was to preserve the safety of the officers and § 87(2)(b) and because the major case involved narcotics and firearms. § 87(2)(b) was not frisked. PO Jimenez did not recall seeing a bag in § 87(2)(b)'s hands. PO Jimenez did not see an officer put his hands inside any bag that § 87(2)(b) might have had and he did not do so himself. PO Jimenez did not enter any of § 87(2)(b)'s pockets.

After the frisk, § 87(2)(b) provided his identification to PO Jimenez. PO Jimenez looked at the name on the identification and either passed the card along to SGT Anderson or another officer who then passed

it along to SGT Anderson. SGT Anderson looked at the identification, looked at some papers, and made a phone call.

While SGT Anderson did that, § 87(2)(b) asked why he was stopped. PO Jimenez stated that they were looking for a certain person and verifying whether he was that person. PO Jimenez did not ask § 87(2)(b) where he was coming from or make any references to narcotics, firearms, or moving violations.

One of the officers entered the vehicle through one of the passenger side doors, PO Jimenez did not recall which, and looked inside for a few seconds. PO Jimenez surmised that this officer was inspecting the black shopping bag, but he did not actually see what the officer did inside the vehicle. PO Jimenez never saw the black shopping bag inside the vehicle and he never received information about what was inside the bag. PO Jimenez did not believe that PO Tagnosky searched the vehicle, because he was at the rear with PO Jimenez. PO Jimenez did not believe SGT Anderson searched the vehicle either, because SGT Anderson was at a distance looking at PO Jimenez, PO Tagnosky, and the vehicle's occupants as they stood at the rear. PO Jimenez did not know if DT Ortiz searched the vehicle.

SGT Anderson confirmed that § 87(2)(b) was not the suspect and § 87(2)(b) and § 87(2)(b) were told that they were free to go.

Subject Officer: PO KEVIN TAGNOSKY

- *PO Tagnosky is a § 87(2)(b)-old white male, who stands 5'9", weighs 170 lbs., and has brown hair and brown eyes.*
- *On April 15, 2013, PO Tagnosky worked from 8:00 a.m. to 7:33 p.m. and was initially assigned to report to a court appearance and later reassigned to assist with an emergency search warrant with Gang Major Case Squad in the Bronx. PO Tagnosky was partnered with PO Charne Jimenez, dressed in uniform, and assigned unmarked vehicle #46327.*

Memo Book (encl. 9a-9b):

At 1:45 p.m., PO Tagnosky recorded an inspection of RMP 46327. PO Tagnosky partnered with PO Jimenez on a search warrant in the confines of the 43rd Precinct, § 87(2)(b) and East Tremont Avenue, assignment: first bunker. At 7:15 p.m., PO Tagnosky returned to his command.

CCRB Statement (encl. 9c-9d):

On June 13, 2014, PO Tagnosky was interviewed at the CCRB. § 87(2)(g)

§ 87(2)(e)

There was no tactical meeting when he received his assignment and he did not receive any additional information about the assignment or the case.

PO Tagnosky and PO Jimenez parked their vehicle outside of view of the apartment building. PO Tagnosky did not recall exactly where they were positioned. SGT Anderson also went to the location but PO Tagnosky did not recall if SGT Anderson went alone or where SGT Anderson was positioned.

They stood by awaiting approval for the emergency search warrant. PO Tagnosky received no additional information about the major case or its subjects until right before the execution of the search warrant, when they held a tactical meeting at a nearby gas station. A supply of narcotics and firearms were recovered from the apartment during the search warrant execution, but no subjects were found. PO

Tagnosky took no part in the apprehension of subjects related to this case. PO Tagnosky returned to his command immediately after the execution of the search warrant.

Despite being shown photos of § 87(2)(b) and § 87(2)(b)'s vehicle, PO Tagnosky did not recall the encounter. PO Tagnosky was also provided with salient details surrounding the incident, including details about § 87(2)(b)'s and § 87(2)(b)'s activities and the package they had in their possession, but he did not recall the incident.

Subject Officer: SGT TERRELL ANDERSON

- *SGT Anderson, who has since been promoted to lieutenant, is a § 87(2)(b)-old black male, who stands 5'10", weighs 180 lbs., and has black hair and brown eyes.*
- *On April 15 2013, SGT Anderson worked from 12:00 p.m. to 8:30 p.m. (he did not recall if he worked any overtime) and was assigned as a supervisor with Brooklyn South Gang Squad. SGT Anderson was partnered with DT Joebian Ortiz, dressed in plainclothes, and assigned an unmarked vehicle.*

Memo Book (encl. 10a-10b):

UF-61 Complaint Report #§ 87(2)(b), which was provided by SGT Anderson, documented the loss/destruction of SGT Anderson's memo book (serial #A790686) on March 25, 2014 in a marked patrol car accident/fire.

CCRB Statement (encl. 10c-10e):

On May 20, 2014, SGT Anderson was interviewed at the CCRB. § 87(2)(e)

§ 87(2)(b) The individual was a Hispanic male with a medium complexion whose face was visible in the photo, but not much else. SGT Anderson did not recall the male's name or age or if any pedigree information was provided. This was the only paperwork SGT Anderson had on this case; he was not given similar print-outs for the other suspects. § 87(2)(e)

SGT Anderson and DT Joebian Ortiz responded to the vicinity of the location in the Bronx, identified by the investigation as § 87(2)(b). They met two detectives from Major Case Gang Squad at the location. There were no other officers from Brooklyn South Gang Squad there at this point. They did not have a tactical meeting or discuss anything substantive. The Major Case Gang Squad detectives assumed a position in the area where they were able to see the entrance of § 87(2)(b). SGT Anderson and DT Ortiz parked around the corner from the building. PO Jimenez and PO Tagnosky parked "opposite" SGT Anderson's vehicle. SGT Anderson, DT Ortiz, PO Tagnosky, and PO Jimenez were unable to see the entrance of § 87(2)(b). SGT Anderson was unaware of any officers positioned inside the apartment building. The Major Case Gang Squad already had a search warrant for an apartment on the § 87(2)(b) floor of the building, but they were waiting for additional units before executing the search warrant.

After some time, the Major Case Gang Squad transmitted that an individual who resembled the wanted suspect exited the apartment building carrying boxes and entered a vehicle. SGT Anderson did not recall if a physical description of the suspect was provided. The transmission mentioned only this individual and said nothing of any companion(s). The individual's direction of flight was included, but SGT

Anderson did not recall what it was at the time of his interview. SGT Anderson saw none of what the transmission described. DT Ortiz was in the vehicle with SGT Anderson when the information came over. SGT Anderson did not receive information that this individual had attempted to enter the apartment where the search warrant was to be executed, or entered it, or emerged from it, or engaged with the door to the apartment in any way.

SGT Anderson determined that there was reasonable suspicion to stop the vehicle. SGT Anderson directed PO Jimenez and PO Tagnosky to stop the vehicle. PO Jimenez and PO Tagnosky pulled out of their parking spot. SGT Anderson and PO Jimenez followed. Within a few minutes, SGT Anderson was told the location of the stop. SGT Anderson responded to the location, identified by the investigation as East Tremont Avenue and White Plains Road.

SGT Anderson exited his vehicle and approached § 87(2)(b) PO Jimenez, and PO Tagnosky, who were all at the rear of § 87(2)(b)'s vehicle. SGT Anderson did not recall what they were talking about. Upon seeing § 87(2)(b) SGT Anderson agreed that he looked like the wanted suspect who he had a photo of. There was a woman, identified as § 87(2)(b) with § 87(2)(b) but SGT Anderson did not recall interacting with her or seeing another officer do so. SGT Anderson did not recall if any of the vehicle's doors were open or if the windows had tints.

SGT Anderson asked either PO Tagnosky or PO Jimenez if § 87(2)(b) was the wanted suspect. SGT Anderson used the name of the suspect at the time, but he did not recall what it was at the time of his CCRB interview. Either PO Tagnosky or PO Jimenez already had § 87(2)(b)'s identification, which was handed to SGT Anderson. SGT Anderson looked at the identification, cross-referenced it with the wanted suspect photo he had, and determined that § 87(2)(b) was not the suspect. SGT Anderson notified the detectives from Major Case Gang Squad of the negative results.

After SGT Anderson confirmed that § 87(2)(b) was not the suspect, SGT Anderson looked into the vehicle at the boxes from outside the vehicle. SGT Anderson had been told nothing about the boxes by the other officers at the scene. SGT Anderson did not recall which window or door he stood by to look at the boxes, but he had an unobstructed view of them. There were multiple large boxes with attached mailing labels inside the vehicle. SGT Anderson did not recall how many packages there were and he did not touch them. SGT Anderson did not recall seeing a trash bag. SGT Anderson did not enter the vehicle. § 87(2)(b) was asked about the packages. He explained something about mailing bottles of cologne.

SGT Anderson did not see an officer frisk § 87(2)(b) SGT Anderson did not see an officer handle or put his hands inside § 87(2)(b)'s handbag. SGT Anderson did not see an officer enter § 87(2)(b)'s vehicle.

Subject Officer: DT JOEBIAN ORTIZ

- *DT Ortiz is a § 87(2)(b)-old Hispanic male, who stands 5'9", weighs 215 lbs., and has black hair and brown eyes.*
- *On April 15, 2013, DT Ortiz worked from 12:00 p.m. to 9:33 p.m. and was assigned to Brooklyn South Gang Squad. On this date, DT Ortiz teamed up with members of Bronx Gang Squad and Gang Major Case Squad for the execution of an emergency search warrant in the Bronx. DT Ortiz was partnered with SGT Terrell Anderson, dressed in plainclothes, and possibly—DT Ortiz was not certain—assigned an unmarked black Toyota Camry.*

Memo Book (encl. 11a-11b):

At 1:35 p.m., DT Ortiz was en route to the vicinity of the 43rd Precinct in regard to a Major Case takedown with SGT Anderson. At 2:30 p.m., DT Ortiz was in the vicinity of the 43rd Precinct in regard to a search warrant at § 87(2)(b). At 4:00 p.m., there was a tactical meeting in regard to the search warrant at the location. At 4:30 p.m., the search warrant was executed. At 7:00 p.m., DT Ortiz resumed patrol. At 8:50 p.m., DT Ortiz returned to the Brooklyn South Gang Squad command.

CCRB Statement (encl. 11c-11e):

On April 24, 2014, DT Ortiz was interviewed at the CCRB. On April 15, 2013, DT Ortiz was with SGT Anderson in the vicinity of § 87(2)(b) in the Bronx, where a search warrant for an apartment in the building was to be executed that day. DT Ortiz, SGT Anderson, and a number of other officers were parked in cars on standby waiting for the search warrant to be sworn at which time they would execute it.

DT Ortiz did not recall the positioning of the other officers on standby or whether any officers were inside the location.

While waiting in the vehicle with SGT Anderson, they received a point-to-point radio transmission that a male exited the building with a package and entered a described vehicle. DT Ortiz did not recall if a description of the individual or package was provided. DT Ortiz understood the transmission to indicate that this individual was possibly involved in the illegal activity under investigation. DT Ortiz did not see what the transmission described (because his positioning did not permit him to). Another unit identified as PO Jimenez and PO Tagnosky went to stop the vehicle. DT Ortiz and SGT Anderson backed up PO Jimenez and his partner.

DT Ortiz and SGT Anderson did not immediately follow PO Jimenez's vehicle; by the time they arrived PO Jimenez and his partner were out of their vehicle and positioned on either side of § 87(2)(b)s, vehicle. § 87(2)(b) was out of his vehicle. The front driver side door was open. A female passenger, identified as § 87(2)(b) was inside the vehicle. DT Ortiz did not recall if she ever exited the vehicle.

DT Ortiz spoke to § 87(2)(b) but he did not recall what questions, if any he asked. DT Ortiz did not recall what PO Jimenez, PO Jimenez's partner, or SGT Anderson did as DT Ortiz spoke to § 87(2)(b). DT Ortiz tried to calm § 87(2)(b) down, who was upset and asking why he was stopped. DT Ortiz did not ask § 87(2)(b) anything about § 87(2)(b). DT Ortiz did not request or receive any documents from § 87(2)(b) and he did not recall if another officer did so.

DT Ortiz did not recall seeing an officer frisk § 87(2)(b). DT Ortiz did not recall if any officers entered the vehicle at any point, including himself. DT Ortiz did not recall if he ever learned what was inside the package. He did not recall any mention of eBay.

DT Ortiz did not recall ever speaking to § 87(2)(b) nor did he recall seeing an officer handle her handbag or seeing an officer put his hands inside it.

Subject Officer: DT STEVEN MILLWATER

- *DT Millwater is a § 87(2)(b)-old white male, who stands 6'0", weighs 185 lbs., and has brown hair and brown eyes.*
 - *On April 15, 2013, DT Millwater worked from 7:00 a.m. to 11:33 p.m. and was assigned to Gang Major Case Squad. § 87(2)(e)*
- DT Millwater

was partnered with DT Robert Herley, who has since retired from the NYPD, was dressed in plainclothes, and assigned an unmarked black Chrysler 200 (#47357).

Memo Book (encl. 13c-13d):

At 8:25 a.m., DT Millwater resumed patrol in the vicinity of the 107th Precinct in regard to administrative work for case #35/11. At 11:15 p.m., DT Millwater returned to the command. At 11:33 p.m., DT Millwater ended his tour.

CCRB Statement (encl. 13e-13f):

On July 24, 2014, DT Millwater was interviewed at the CCRB. On April 15, 2013, in the late afternoon, DT Millwater, SGT John O'Keefe directed DT Millwater and DT Herley to go to an apartment building on § 87(2)(b) in the Bronx to secure an apartment in anticipation of a search warrant execution. No one was to be allowed into or out of the apartment.

DT Millwater and DT Herley went directly to the location. They were the only officers at the location. They were outside the apartment building for approximately 30 minutes before going inside. Once inside, they stood in the hallway outside of the subject apartment. They did not encounter other officers while securing the apartment. DT Millwater was aware that additional officers were supposed to report to the location, but he had no communication with them until later, when the search warrant was actually obtained. DT Millwater was unaware of other officers from Major Case Gang Squad reporting to the location while he was there. DT Millwater was also unaware of a vehicle stop related to this major case occurring in the vicinity of the apartment building.

DT Millwater viewed photos of § 87(2)(b) and § 87(2)(b) and was given details surrounding their allegations, including a description of the package they had on the date of the incident. None of the information provided to DT Millwater refreshed his recollection regarding the incident. DT Millwater was unable to speak to whether § 87(2)(b) bore any likeness to any suspects who were at large in regard to the major case, because DT Millwater could not recall which suspects were at large at that point in time.

DT Millwater did not make a radio transmission requesting that a vehicle be stopped, and he did not see DT Herley do so.

Witness Officer: LT JOHN XENAKIS

- *LT Xenakis is a § 87(2)(b)-old Asian male, who stands 6'0", weighs 250 lbs., and has black hair and brown eyes.*
- *On April 15, 2013, LT Xenakis worked from 8:00 a.m. to 11:35 p.m. and was assigned as a supervisor with Major Case Gang Squad. LT Xenakis did not have an assigned partner and was dressed in plainclothes.*

Memo Book (encl. 12a-12c):

§ 87(2)(e)

At 11:35 p.m., LT Xenakis ended his tour.

CCRB Statement (encl. 12d-12e):

On July 10, 2014, LT Xenakis was interviewed at the CCRB. On April 15, 2013, LT Xenakis was on restricted duty as a result of a prior line of duty injury. § 87(2)(e)

LT Xenakis sent DT Robert Herley and DT Steven Millwater to secure an apartment inside § 87(2)(b) in preparation for the execution of a search warrant. These were the only officers sent to secure

the apartment. They likely positioned themselves in the hallway outside of the apartment. It was unlikely that DT Hermann went to the location because, as the lead investigator, he was likely busy meeting with judges, assistant district attorneys, and preparing paperwork. LT Xenakis did not recall if anyone from Gang Brooklyn South assisted with the takedown.

LT Xenakis stated that reviewing a list of all the suspects involved in this major case would not assist him in recalling which suspects were at large on April 15, 2013, due to how much time has transpired and due to the high volume of investigations he supervises. LT Xenakis was given details surrounding the complaint, but he did not recall learning of an incident resembling this one.

Additional Officer Statements (encl. 14a-18e):

DT Shane Gugliucciello and DT Jose Rodriguez were interviewed for this investigation. They were not present in the vicinity of § 87(2)(b) until several hours after this incident. SGT John O’Keefe and DT Vincent Imperato were also interviewed but they were not present in the Bronx on the date of this incident.

Officers Not Interviewed

DT Frank Hermann and DT Robert Herley retired from the NYPD before the undersigned was able to interview them for this investigation (encl. 25u, 25qq). LT Peter Caretta was not interviewed because he was on long-term sick leave at the time of this incident (encl. 16a-16b).

NYPD Documents:

Requests for Online Stop, Question, and Frisk Report (encl. 25rr, 25ss)

Queries of the Online Stop, Question, and Frisk Report database for relevant reports within the confines of the 43rd Precinct and the 49th Precinct yielded negative results.

Other Evidence:

Information Request to Queens County District Attorney’s Office (encl. 19a-19bb, 24b-24e)

§ 87(2)(e)
[REDACTED]

§ 87(2)(e)
[REDACTED]

A review of mug shot pedigrees and arrest reports for the 19 individuals yielded a total of nine Hispanic males with medium to light skin complexion aged 21 to 33 (encl. 20b-20x).

Status of Civil Proceedings (encl. 22a):

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of January 31, 2014 with regard to the incident.

Civilians' Criminal Histories (encl. 21a-21n):

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians' CCRB Histories (encl. 3a-3b):

- This is the first CCRB complaint filed by [§ 87(2)(b)] and the first CCRB complaint involving [§ 87(2)(b)]
[REDACTED]

Subject Officers' CCRB Histories (encl. 2a-2f):

- SGT Anderson has been a member of the service for 10 years and there are two substantiated CCRB allegations against him.
 - In case #201101623, allegations of an entry and the authorization of a search of a residence were substantiated against SGT Anderson. The CCRB recommended charges. The NYPD issued a command discipline B.
- PO Jimenez has been a member of the service for eight years and there are no substantiated CCRB allegations against him.
- PO Tagnosky has been a member of the service for six years and there are no substantiated CCRB allegations against him.
- DT Ortiz has been a member of the service for 17 years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

[§ 87(2)(g)] Although PO Tagnosky did not recall this incident, his presence was corroborated by PO Jimenez. Additionally, he matched the physical description provided by the civilians of the officer that searched [§ 87(2)(b)]'s bag. [§ 87(2)(g)]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: SGT Terrell Anderson stopped the car in which [§ 87(2)(b)] and [§ 87(2)(b)] were occupants.

[§ 87(2)(b)] and [§ 87(2)(b)] exited [§ 87(2)(b)] with a black trash bag filled with small manila envelopes. They entered [§ 87(2)(b)]'s vehicle and drove away. Their vehicle was stopped on East Tremont Avenue and White Plains Road.

Officers were in the vicinity preparing to execute a search warrant inside an apartment located in [§ 87(2)(b)]

[REDACTED] [§ 87(2)(e)]

DT Millwater and DT Herley were inside of [§ 87(2)(b)] watching the subject apartment. They did not see anyone attempting to exit or enter the apartment. According to DT Millwater, they did not direct the stop of any vehicles.

Prior to positioning themselves outside [§ 87(2)(b)] PO Jimenez sat for a tactical meeting,

[§ 87(2)(e)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PO Jimenez observed § 87(2)(b) exit § 87(2)(b) with a black shopping bag. SGT Anderson directed PO Jimenez to stop § 87(2)(b)'s vehicle because § 87(2)(b) resembled a suspect involved in the major case for whom they had an arrest warrant. PO Jimenez did not initially notice the likeness, but agreed with SGT Anderson's assessment upon stopping § 87(2)(b).

According to SGT Anderson, the Major Case Gang Squad transmitted that an individual resembling the wanted suspect exited the building with boxes and entered a vehicle. SGT Anderson did not see this but directed a stop of the vehicle. According to DT Ortiz, the radio transmission only described a male exiting the building with a package and entering a vehicle.

Although § 87(2)(b) stated he was told that he had been observed committing a moving violation, none of the officers made any mention of this as a factor contributing to the stop.

None of the officers interviewed could recall which suspects related to this major case had active warrants for their arrest on the date of the incident. The lead detective on the case, DT Hermann, retired before the undersigned was able to interview him.

According to information obtained from the Queens County District Attorney's Office, nine of the suspects associated with the major case investigation were Hispanic males with medium to light skin complexion aged 21 to 33.

An officer is justified in stopping a person who bears a strong resemblance to a photograph of a wanted suspect. People v. Simpson, 2002 N.Y.Misc. LEXIS 204 (Sup. Ct. Queens Cty. 2002) (encl. 1a-1f).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation B – Abuse of Authority: PO Charne Jimenez frisked § 87(2)(b)

It is undisputed that PO Jimenez frisked § 87(2)(b).

PO Jimenez saw nothing inside of § 87(2)(b)'s vehicle as he approached that heightened his suspicion. Nothing about § 87(2)(b)'s appearance inside or outside the vehicle heightened PO § 87(2)(b) [sic]'s suspicion, including any movements or shapes or bulges. PO Jimenez frisked § 87(2)(b) because § 87(2)(b) was possibly a subject in a major investigation § 87(2)(e) and for the safety of the officers and § 87(2)(b).

A frisk is permissible only if an officer has a particularized reasonable suspicion that the suspect may be armed. People v. Forrest, 77 A.D. 3d 511 (App. Div. 1st Dept. 2010) (encl. 11). In People v. Boulware,

the court found that officers were not justified in frisking a suspect in a high crime area who they believed to have prior gun possession arrests absent additional indicators of criminal activity. People v. Boulware, 130 A.D.2d 370 (App. Div. 1st Dept. 1987) (encl. 1m-1o).

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Kevin Tagnosky searched § 87(2)(b) s bag.

§ 87(2)(g)

According to § 87(2)(b) after she exited the vehicle, PO Tagnosky asked if he could “see” the bag she was holding. § 87(2)(b) unzipped the main compartment for PO Tagnosky to look inside. PO Tagnosky put his hand inside the bag and felt around. § 87(2)(b) did not see PO Tagnosky search § 87(2)(b) s bag, but stated that he was made aware after the incident that § 87(2)(b) s bag was “checked.”

PO Tagnosky did not recall his involvement in this incident. SGT Anderson did not see an officer search § 87(2)(b) s bag. PO Jimenez and DT Ortiz did not recall seeing an officer search § 87(2)(b) s bag.

§ 87(2)(g)

Allegation D – Abuse of Authority: SGT Terrell Anderson searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

According to § 87(2)(b) SGT Anderson opened the front driver side door and leaned inside of his vehicle. § 87(2)(b) did not see what SGT Anderson did next because he was told to face the opposite direction. § 87(2)(b) saw SGT Anderson look around and feel around the front driver seat and front passenger seat areas and open the glove compartment. SGT Anderson also leaned toward the back seat area where the trash bag was and felt around. From inside the vehicle, SGT Anderson asked § 87(2)(b) something about merchandise. § 87(2)(b) explained the contents of the trash bag, which was filled with small envelopes containing fragrances.

SGT Anderson denied entering § 87(2)(b) s vehicle. SGT Anderson stated that after he confirmed that § 87(2)(b) was not the wanted suspect, he walked to the side of the vehicle and looked inside through a window or open door, from the outside. SGT Anderson saw large boxes with mailing labels. He did not recall seeing a trash bag.

PO Jimenez, although he did not recall who or believe it was SGT Anderson, confirmed that an officer entered the vehicle. PO Jimenez assumed the officer was inspecting the package, a medium-size black shopping bag. DT Ortiz did not recall if anyone entered § 87(2)(b) s vehicle. PO Tagnosky did not recall the incident.

§ 87(2)(g)

Absent probable cause, it is unlawful for an officer to search a vehicle once the suspect has been removed and frisked without incident. People v. Baksh, 113 A.D.3d 626 (App. Div. 2nd Dept. 2014) (encl. 1v-1x). An officer may, however, conduct a limited search of a vehicle when there is a substantial likelihood of a weapon in the vehicle.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date